IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI

CRIMINAL MISC.APPLICATION NO. 41 OF 2005

Shri Vishnu Namdev Gaonkar .... Applicant

V e r s u s

STATE
through P.I.
Mapusa Police Station . .... Respondent

Shri S. M. Walwoikar, Advocate for the Applicant.

Shri S. N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM: N.A. BRITTO, J.

DATE : **28.04.2005.**

O R D E R

Shri Sardessai, the learned P.P. Informs that the applicant/accused has not been arrested till date though he had communicated the Order of this Court dated 7/8th April, 2005, to the

Inspector in charge of Mapusa Police Station, who was required to take over the investigations. Shri Sardessai, has placed on record the copy of the letter dated 12.04.05, addressed by the applicant/accused to the Police Inspector, by which he has informed the Police Inspector that he has left Goa in pursuit of filing a Special Leave Petition before the Hon'ble Supreme Court and, in the event, his Special Leave Petition is dismissed, then he would surrender before him.

2. On 7.04.05, the I.O. Shri S. S. Narvekar, PSI, was present and the applicant/accused was absent and was required to remain present on 8.04.05. On this day, although the applicant appeared, the I.O. Shri Narvekar remained absent and it appears to me that he has remained absent designedly. Although, the bail application filed by the applicant/accused was rejected by Order dated 16.03.05, by the learned Additional Sessions Judge, Mapusa, the applicant/accused was not arrested. The case diaries showed him as absconding but Shri Walwoikar, the learned Advocate of the accused has stated that the applicant/accused was attending his office regularly.

3. Although the bail application filed by Caridade Carasco,

(President) Savio D'Souza, (Treasurer) and Michael Carasco (Attorney), was rejected by the learned Additional Sessions Judge, Panaji, on 17.02.04, for over a year none of the said accused were interrogated. It appears that the police are not at all serious in investigating Crime no. 40/04 under Section 409 r/w Section 34 I.P.C., of Mapusa Police Station, as seen particularly from the conduct of PSI Shri Narvekar. Whether an accused is to be arrested or not in a given case is primarily a discretion of the Investigation Officer, but he will cease to have such discretion after he tells the Court that the presence of accused is required in custody and the bail application of such accused for anticipatory bail is rejected. Any other view is bound to give rise to undesirable practices. There is no explanation as to why none of the accused were arrested when it was represented before all the Courts including this Court that the presence of the accused was required for custodial interrogation and for recovery of the amount which was misappropriated. In my view, it would be in the public interest to ensure that the investigations of the said crime are carried out and brought to their logical conclusion which, it appears to me, for the present, are sought to be hushed off by the police.

4. Place this matter concerning the investigations of Crime

no.40/04 under Section 409 r/w Section 34 I.P.C., for further directions before the Division Bench, after vacation.

N. A. BRITTO, J.

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